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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

FIVE HOTEL FZCO et al., Plaintiffs and Appellants, v. VICEROY HOTELS, LLC, et al., Defendants and Respondents.	B288793 (Los Angeles County Super. Ct. No. BC674956)

APPEAL from an order of the Superior Court of Los Angeles County. Holly E. Kendig, Judge. Affirmed.

Irell & Manella, Steven A. Marenberg, Victor Jih, and John Long Plaintiffs and Appellants.

Quinn Emanuel Urquhart & Sullivan, Susan R. Estrich, Christopher Tayback, and T. Scott Mills for Defendants and Respondents.

Plaintiffs and appellants FIVE Hotel FZCO, Assas Investments Limited, and FIVE Holdings (BVI) Limited challenge a trial court order granting defendants and respondents Viceroy Hotels, LLC, Viceroy Hotel Management, Inc., William Walshe, and Kristie Goshow's motion to strike their first amended complaint (FAC) pursuant to Code of Civil Procedure section 425.16,[1] California's anti-SLAPP statute.[2]

We conclude that plaintiffs' claims fall squarely within the scope of the anti-SLAPP statute and that plaintiffs have not demonstrated a probability of prevailing. Accordingly, we affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

I. *Factual Background*

Hotel management deal

In 2012, Kabir Mulchandani (Mulchandani) approached Viceroy Hotels, LLC, and Viceroy Hotel Management (collectively Viceroy) with the opportunity to develop and manage a luxury hotel on land he owned in Dubai. Eventually, the parties entered into a series of agreements providing for Viceroy to develop, brand, and exclusively manage the hotel. One of those agreements, the Hotel Management Agreement (HMA), provided for a 30-year term in which Viceroy, through it subsidiary and

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

[2] SLAPP is an acronym for strategic lawsuit against public participation. (*Wilcox v. Superior Court* (1994) 27 Cal.App.4th 809, 813, overruled in part on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5 (*Equilon*).)

signatory VIH Palm Jumeirah Dubai, Ltd. (VIH Dubai), would be the exclusive manager of the hotel. Mulchandani designated plaintiffs' affiliated entity, Assas Opco Limited (Assas Opco), as the signatory to the HMA. The HMA designated the Dubai International Financial Centre Courts (DIFC Courts), which supervise commercial arbitrations and were created to foster international investment, as the forum for resolving disputes relating to the agreement.

The hotel opened in March 2017. Ten days after opening, Mulchandani approached Viceroy insisting that, notwithstanding the terms of the HMA, he should be installed as comanager. Viceroy rejected his demand, and, in a letter dated June 16, 2017, insisted that he abide by the terms of the HMA. Three days later, Mulchandani and his team arranged for Dubai police officers to stand guard in the hotel lobby as Viceroy employees were forced out of the hotel. The hotel was rebranded from a Viceroy hotel to the Five Hotel, and FIVE Hotel FZCO began managing and operating the hotel.

Viceroy obtains an injunction

On June 22, 2017, Viceroy, through its affiliate VIH Dubai, filed an ex parte application for an injunction in the DIFC Courts. The DIFC Court issued an injunction, which provided that Assas Opco "shall not . . . whether by its directors, employees, officers, or agents or in any other way . . . prevent [VIH Dubai] or its employees from directing, supervising, operating, and managing the [hotel] in accordance with the [HMA]." The injunction also provides that "any other person who knows of this Order and does anything which helps or permits [Assas Opco] to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have

their assets seized." (Bold & capitalization omitted.) Notably, the injunction specifically gives VIH Dubai "permission to make public the existence and terms of this Order."

Mulchandani tried to block the injunction, by challenging its terms before the DIFC Court and initiating parallel proceedings against Viceroy in Dubai's civil court. On July 2, 2017, the DIFC Court issued an order rejecting Mulchandani's claim and confirming that the injunction previously issued remained in full effect.

The challenged statements

Following the DIFC Court's July 2 ruling, Mulchandani issued a press release stating that he would "take all steps to ensure the interests of the hotel's employees, guests, investors and stakeholders remain protected and are never compromised." The press release went on to claim that "Five Hotel FZCO continues to manage the [hotel]" and "[p]ursuant to the Decree and the reference to the Dubai Joint Judicial Committee, all proceedings between ASSAS OpCo Limited and VIH Dubai Palm Jumeirah . . . have been suspended by force of law."

1. *Viceroy's press release*

In response, Viceroy issued a press release of its own, noting that Mulchandani and FIVE Hotel FZCO's statement was "inaccurate in many respects." Viceroy "confirm[ed] that the injunction issued by the DIFC Courts on 22 June 2017 remains in place. That order prohibits the owner of the . . . hotel from taking any steps to prevent Viceroy from exercising its exclusive authority to manage the hotel, and orders the reinstatement of Viceroy." The press release went on to state that Mulchandani's efforts to remove Viceroy from the hotel property constituted "wrongful actions" and "a breach of the [HMA]," and to note that

the litigation "creat[ed] confusion" and "inconvenience." The conclusion of the press release contains a paragraph titled "ABOUT VICEROY HOTEL GROUP" and describes Viceroy's business as a "leader in modern luxury" and hospitality.

2. *Web site statement*

At some point,[3] defendants also represented on a Web site titled "Viceroy Palm Jumeirah Dubai" that "Viceroy [had been] wrongfully terminated as the rightful manager of the Hotel and removed from the property. [¶] Viceroy has an injunction from the DIFC Court ordering that the owner of the Hotel must not interfere with Viceroy's exclusive authority to manage the Hotel, and must restore the Viceroy branding. [¶] To date the Hotel owner has refused to rebrand the Hotel or to provide Viceroy with access to the Hotel. [¶] Instead, the Hotel has and continues to be wrongfully rebranded as Five Hotel, a branch which has no relationship whatsoever to Viceroy. [¶] Viceroy regrets the inconvenience this situation has caused and is continuing to cause its guests. [¶] In the circumstances Viceroy is pursuing all legal courses of action available to it."

3. *Travel industry letter*

On or about July 31, 2017, Viceroy's counsel sent a letter to interested parties in the travel industry. That letter set forth Viceroy's "difficulties" that it was "experiencing with the Owner [of the hotel] and those connected with it." The letter continues: "As you are aware Viceroy was wrongfully terminated as the rightful manager of the Hotel and removed from the property. The Hotel was also wrongfully rebranded as Five Hotel. [¶]

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[3] The FAC alleges that defendants posted this message in mid-July 2017.

Viceroy obtained an injunction from the DIFC Court ordering that the Owner of the Hotel must not interfere with Viceroy's exclusive authority to manage the Hotel and must restore the Viceroy branding. [¶] We understand you may have subsequently been told that there is no such injunction. You have been misinformed if so, and in the circumstances we enclose a copy of the injunction dated 22 June 2017 along with a declaration issued by Justice Sir Richard Field confirming that the injunction remains. [¶] Viceroy is pursuing all legal courses of action available to it."

II. *Procedural Background*

On September 7, 2017, plaintiffs filed their complaint against defendants. The FAC, the operative pleading, alleges three causes of action: defamation, trade libel, and intentional interference with prospective economic advantage. All of the claims are based upon damages caused by statements in defendants' press release, Web site statement, and travel industry letter.

In response, defendants filed an anti-SLAPP motion, seeking to strike the FAC. They argued that plaintiffs' entire complaint arose from protected activity and that plaintiffs could not show a probability of prevailing on the merits.

Plaintiffs opposed defendants' motion. Principally, they argued that the commercial dispute exception (§ 425.17, subd. (c)) barred defendants' anti-SLAPP motion. Alternatively, although they conceded that the alleged wrongful statements arose from protected activity, they nonetheless argued that the anti-SLAPP statute did not apply because plaintiffs' claims had a probability of success.

After entertaining oral argument, the trial court granted defendants' anti-SLAPP motion. The trial court found that plaintiffs' claims arose from protected activity, thereby implicating the anti-SLAPP statute. Then it turned to the question of whether plaintiffs could establish a probability of success on their three causes of action and determined that they could not. Regarding plaintiffs' trade libel claim, the trial court found that "plaintiffs provide[d] no evidence of disparagement of the quality of [their] goods or services. Indeed, the statements at issue do not concern goods or services, and there is no persuasive evidence that defendants' statements were false." Moreover, the trial court found "that defendants' statements about the injunction from the DIFC court were truthful."

Regarding plaintiffs' defamation claim, the trial court found that "[t]he statements about the contents of the injunction and court order were true, or else were non-actionable opinions. Furthermore, there was no specific factual evidence of damages." The trial court also rejected "plaintiffs' assertion that the owner of the hotel was not enjoined by the DIFC court (purportedly because the owner is not a party to the Dubai lawsuit in which the injunction was issued)," reasoning that the "injunction applied not only to named defendant Assas Opco . . . , but also to its 'directors, employees, officers or agents.' Assas Investments Limited . . . is a corporate affiliate with [Assas] Opco . . . [a]nd both entities are controlled by the same individuals and/or entities." Moreover, Mulchandani "admitted" that he is the owner of the hotel "'acting through his various corporate entities.'"

In so ruling, the trial court noted that "the injunction at issue is extremely broad in scope. It also applies to the parties

and to 'any other person who knows of this order.' It orders that defendant shall not 'in any other way' prevent Viceroy from managing the Hotel. Ultimately, plaintiffs' narrow interpretation of the injunction is unpersuasive and insufficient to establish material falsity." "Even more significantly, the broad language in the injunction prohibits affiliate [Assas] Opco from interfering with Viceroy's management of the hotel, 'whether by its directors, employees, officers or agents or in any other way.' . . . The broad language of the injunction clearly encompasses corporate affiliate Assas Investments Limited and its owners and affiliates."

"Perhaps most significant[ly]," the trial court found that Viceroy's statements were protected by the litigation and fair and true reporting privileges. After all, the evidence showed that the statements (1) furthered defendants' litigation objective of establishing that they were the rightful manager of the hotel, and (2) were explicitly authorized by the DIFC Court's injunction. As for the reporting privilege, the trial court held that the statements were fair and true reports to a public journal about judicial proceedings and were well within the privilege's flexible literary license.

Finally, the trial court rejected plaintiffs' attempt to show that the commercial speech exemption applied for three reasons. First, the trial court found that the parties, until recently, were business partners; there was no evidence of actual competition between them. Second, plaintiffs failed to show "that the statements were made for the purpose of promoting, obtaining approval for, or securing sales or leases of Viceroy's goods or services." Third, "[a]part from the injunction," defendants' statements "made no mention of plaintiffs' operation of the hotel, did not comment on the success or failure of the hotel under Five,

did not opine on the quality of any hotel services, or the ability of guests to book rooms."

Plaintiffs timely appealed the trial court's order.

DISCUSSION

I. Standard of review

"We review the trial court's rulings on a SLAPP motion independently under a de novo standard of review. [Citation.]" (*Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 929.)

II. *Section 425.17 does not apply*

Because section 425.17 shields from the anti-SLAPP statute a cause of action stemming from commercial speech, we must first determine whether the commercial speech exemption applies before assessing the merits of defendants' anti-SLAPP motion.

A. Relevant law

"In 2003, concerned about the 'disturbing abuse' of the anti-SLAPP statute, the Legislature enacted section 425.17 to exempt certain actions from it." (*Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21 (*Simpson*); see also *Northern Cal. Carpenters Regional Council v. Warmington Hercules Associates* (2004) 124 Cal.App.4th 296, 299.) Specifically, "[s]ection 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist: [¶] (1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining

approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services. [¶] (2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, . . ." (§ 425.17, subd. (c).)

Section 425.17, subdivision (c), exempts "from the anti-SLAPP law a cause of action arising from commercial speech when (1) the cause of action is against a person primarily engaged in the business of selling or leasing goods or services; (2) the cause of action arises from a statement or conduct by that person consisting of representations of fact about that person's or a business competitor's business operations, goods, or services; (3) the statement or conduct was made either for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services or in the course of delivering the person's goods or services; and (4) the intended audience for the statement or conduct meets the definition set forth in section 425.17(c)(2)." (*Simpson*, *supra*, 49 Cal.4th at p. 30.) This "commercial speech exemption" is a statutory exception to section 425.16, and plaintiffs bear the burden of proving its applicability. (*Simpson*, *supra*, 49 Cal.4th at pp. 22, 26.)

B. Analysis

The challenged statements in the press release, on the Web site, and in the travel industry letter are not about hotel services. Rather, they were about a judicial proceeding in Dubai and the injunction issued by the DIFC Court. As the trial court found, Viceroy's statements did not mention "plaintiffs' operation

of the hotel, did not comment on the success or failure of the hotel under Five, did not opine on the quality of any hotel services, or the ability of guests to book rooms. The statements were about the rulings of a Dubai court and about the litigation process." The press release's and Web site's mention of "confusion" and "inconvenience" among guests and the travel industry letter's reference to the "difficulties" Viceroy has experienced are not comments on Five's level of hotel services, but are instead comments on the fallout from Five's ongoing litigation. The press release's footer summarizing the nature of Viceroy's business does not, in our view, convert the release or other statements into promotional statements. Thus, section 425.17, subdivision (c), does not apply.[4] (*Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1054 [challenged e-mail "did not contain statements regarding [the parties'] 'business operations, goods or services'" and "[t]he record show][ed that] the e-mail was sent in order to 'set the record straight' with regard to plaintiffs' allegations against defendants and not to obtain approval for, promote, or secure business for defendants[]"]; *Sunset Millennium Associates, LLC v. LHO Grafton Hotel, L.P.* (2006) 146 Cal.App.4th 300, 313.)

Plaintiffs' reliance upon *Weiland Sliding Doors & Windows, Inc. v. Panda Windows & Doors, LLC* (S.D. Cal. 2011) 814 F.Supp.2d 1033 (*Weiland*) is misplaced. In *Weiland*, the plaintiff (Weiland) and defendant (Panda) were involved in litigation, and

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[4] Because we conclude that defendants' statements do not concern plaintiffs' business and do not promote defendants' business, we need not decide whether plaintiffs and defendants are competitors.

Weiland issued a press release about it. Panda then brought an interference claim against Weiland based upon statements in Weiland's press release. Weiland moved to dismiss the claim under the anti-SLAPP statute, and Panda responded by claiming that the commercial speech exemption to the anti-SLAPP motion compelled denial of Weiland's motion. (*Weiland*, *supra*, at p. 1035.)

The district court found that the commercial speech exemption applied, and therefore it denied Weiland's anti-SLAPP motion. In so ruling, the trial court noted that the press release began by detailing Weiland's lawsuit against Panda, but then "expound[ed] on the innovations that [it] bestowed on the door and window industry." (*Weiland*, *supra*, 314 F.Supp.2d at p. 1037.) It then compared the parties' competing products "side-by-side." (*Ibid*.) Because the press release went beyond the subject matter of the parties' litigation and functioned to promote or secure the sales of the defendant's goods, Panda's intentional interference claim based upon the press release was exempt from anti-SLAPP liability under the commercial speech exemption. (*Ibid*.)

In contrast, as set forth above, defendants' press release, Web site posting, and travel industry letter do not promote Viceroy's products or services. While the press release does contain a section titled "ABOUT VICEROY HOTEL GROUP," it is clear from the entire press release that the purpose of the document was to "set the public record straight," and not to promote Viceroy's luxury hotel business.

TradeMotion, LLC v. MarketCliq, Inc. (C.D. Cal. Oct. 25, 2011, No. CV 11-3236 PSG) 2011 WL 13220413 (*TradeMotion*) also does not compel a different result. In *TradeMotion*, the

district court determined that TradeMotion's "statements, representations to and solicitations of MarketCliq customers" fell within the scope of section 425.17, subdivision (c), "because they consist[ed] of statements of fact (MarketCliq is an illegal business and is bankrupt) made for the purpose of getting these customers to stop doing business with MarketCliq in favor of doing business with TradeMotion." (*TradeMotion*, *supra*, at p. *5.) No such statements were made here. All defendants did here was issue statements to correct Mulchandani's misstatements regarding the DIFC Court injunction, which the injunction specifically authorized.

In light of our conclusion that the commercial speech exemption to the anti-SLAPP statute does not apply, we turn our attention to the merits of defendants' anti-SLAPP motion.

III. *The anti-SLAPP statute*

"A SLAPP is a civil lawsuit that is aimed at preventing citizens from exercising their political rights or punishing those who have done so." (*Simpson*, *supra*, 49 Cal.4th at p. 21.) "In 1992, out of concern over 'a disturbing increase' in these types of lawsuits, the Legislature enacted section 425.16, the anti-SLAPP statute." (*Ibid*.; see § 425.16, subd. (a).) Section 425.16, subdivision (b)(1), provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." The statute "posits . . . a two-step process for determining whether an action is a SLAPP." (*Navellier v. Sletten* (2002) 29 Cal.4th 82,

88.) First, the defendant bringing the special motion to strike must make a prima facie showing that the anti-SLAPP statute applies to the claims that are the subject of the motion. (*Wilcox v. Superior Court*, *supra*, 27 Cal.App.4th at p. 819.) Once a moving defendant has met its burden, the motion will be granted (and the claims stricken) unless the court determines that the plaintiff has established a probability of prevailing on the claim. (*DuPont Merck Pharmaceutical Co. v. Superior Court* (2000) 78 Cal.App.4th 562, 567–568.)

In order to establish a probability of prevailing, a plaintiff must *substantiate* each element of the alleged cause of action through competent, admissible evidence. (*DuPont Merck Pharmaceutical Co. v. Superior Court*, *supra*, 78 Cal.App.4th at p. 568; see also *Navellier v. Sletten*, *supra*, 29 Cal.4th at pp. 88–89 [reiterating that "'the plaintiff "must demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited"'"].) "This requirement has been interpreted to mean that (1) when the trial court examines the plaintiff's affidavits filed in support of the plaintiff's *second step* burden, the court must consider whether the plaintiff has presented sufficient evidence to establish a prima facie case on his causes of action, and (2) when the trial court considers the defendant's opposing affidavits, the court cannot weigh them against the plaintiff's affidavits, but must only decide whether the defendant's affidavits, as a matter of law, defeat the plaintiff's supporting evidence." (*Schroeder v. Irvine City Council* (2002) 97 Cal.App.4th 174, 184.) Only if he fails to meet this burden, was the motion properly granted. (*Mattel, Inc.*

v. Luce, Forward, Hamilton & Scripps (2002) 99 Cal.App.4th 1179, 1188–1189.)

IV. The trial court properly granted defendants' anti-SLAPP motion

We conclude that the trial court properly granted defendants' anti-SLAPP motion. As set forth above, plaintiffs conceded (for purposes of this motion) that the alleged wrongful statements arose from protected activity, thereby satisfying the first prong of our analysis. We therefore turn to the question of whether plaintiffs demonstrated a probability of success on each of their claims leveled against defendants.

A. Trade Libel

The first cause of action alleged against defendants is for trade libel. "Trade libel is an intentional disparagement of the quality of services or product of a business that results in pecuniary damage to the plaintiff. [Citations.] Like defamation, trade libel requires a false statement of fact, not an expression of an opinion. [Citations.] To constitute trade libel the statement must be made with actual malice, that is, with knowledge it was false or with reckless disregard for whether it was true or false. [Citation.] The plaintiff must also plead and prove it actually suffered some pecuniary loss. [Citation.]" (*J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 97.)

As set forth above, defendants did not make any false statements of fact regarding plaintiffs and/or plaintiffs' operation of the hotel. Rather, all of defendants' statements in the press release, on the Web site, and in the travel industry letter pertain to the injunction.

Moreover, all of Viceroy's challenged statements in the press release, on the Web site posting, and in the travel industry

letter are true. (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 646.) While plaintiffs claim that the injunction only pertained to Assas Opco, the plain language of the injunction proves otherwise. As set forth above, the injunction specifically provides that Assas Opco "shall not . . . whether by its directors, employees, officers, or agents or in any other way . . . prevent [VIH Dubai] or its employees from directing, supervising, operating, and managing the [hotel] in accordance with the [HMA]." The injunction also provides that "any other person who knows of this Order and does anything which helps or permits [Assas Opco] to breach the terms of this Order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized." (Bold & capitalization omitted.) In other words, the injunction applies broadly and not just to Assas Opco.

Plaintiffs argue that the injunction-related statements are false, relying on evidence regarding the scope of the DIFC Court's authority and their expert's declaration concerning the interpretation of the injunction under Dubai law. But these attacks pertain to the validity of the injunction, not the fact of what was actually issued by the DIFC Court. It is not for us to determine the validity of an injunction issued by a foreign court.

Regardless, to the extent there may have been some "'hypertechnical[]'" errors in the press release, Web site posting, and/or travel industry letter, any such alleged error does not defeat the substantial truth of the statements published by defendants. (*Reed v. Gallagher* (2016) 248 Cal.App.4th 841, 861; *James v. San Jose Mercury News, Inc.* (1993) 17 Cal.App.4th 1, 17.)

Plaintiffs assert that other statements, such as those pertaining to alleged "'confusion amongst colleagues, guests,

residents and investors,'" are defamatory. Like the trial court, we conclude that these statements amount to nonactionable opinion. (*Paterno v. Superior Court* (2008) 163 Cal.App.4th 1342, 1356; *John Doe 2 v. Superior Court* (2016) 1 Cal.App.5th 1300, 1319–1320.) The statements regarding the alleged confusion are simply too generalized and vague to support a claim for defamation.

1. *Litigation privilege*

Moreover, the litigation privilege protects defendants' Web site statement and travel industry letter. The litigation privilege protects a "publication or broadcast" made in "any . . . judicial proceeding." (Civ. Code, § 47, subd. (b).) "'The usual formulation is that the privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that [has] some connection or logical relation to the action.'" (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241.) The privilege also includes publication to nonparties with a substantial interest in the proceedings. (*Costa v. Superior Court* (1984) 157 Cal.App.3d 673, 678 (*Costa*).)

Here, the Web site statement was posted and the travel industry letters were sent after the DIFC Court issued its July 2, 2017, order affirming the validity of the injunction and rejecting Mulchandani's challenge. The DIFC Court gave its express "permission to make public the existence and terms of this Order" and warned of potential liability to "any other person who knows of this order and does anything which helps or permits the defendant to breach the terms of this order." And, the publications were made to persons with a substantial interest in

the DIFC Court proceedings, including persons interested in traveling to the hotel and travel industry partners who may handle reservations for guests. (*Sharper Image Corp. v. Target Corp.* (N.D. Cal. 2006) 425 F.Supp.2d 1056, 1079.) Given that the DIFC Court's injunction expressly extends potential liability to those who continue to do business with the hotel after Viceroy was removed, the recipients of these publications had a substantial interest in the proceedings.[5]

Plaintiffs argue that the Web site statement and travel industry letters do not fall within the scope of the litigation privilege because they were not made by "litigants or other participants authorized by law." The travel industry letters were sent by VIH Dubai's counsel on behalf of VIH Dubai, the claimant in the DIFC proceedings.[6]

Urging us to conclude that the litigation privilege does not apply to the Web site posting, plaintiffs contend that it was disseminated to too large of an audience. We disagree. The Web site statement was not made to an "unlimited worldwide

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[5] Plaintiffs assert that the letters sent to the travel agencies are not protected by the litigation privilege because (1) there is no evidence that these agencies were participants to the litigation in the DIFC Courts, and (2) the letters do not contain a warning about violating the DIFC Court injunction. As set forth above, the litigation privilege applies to nonparties with a substantial interest in the proceedings. (*Costa*, *supra*, 157 Cal.App.3d at p. 678.) And, not only do letters expressly reference the DIFC Court injunction, but also attached to them is a copy of the DIFC Court's injunction and its July 2, 2017, order.

[6] The parties direct us to no evidence regarding who prepared the Web site posting.

audience." Rather, it was placed on the Viceroy-owned webpage that had previously offered reservations to the hotel and now informed travelers why reservations were no longer offered on that page.

GetFugu, Inc. v. Patton Boggs LLP (2013) 220 Cal.App.4th 141 (*GetFugu*) is distinguishable. In *GetFugu*, the Court of Appeal considered whether a press release and a Tweet were shielded by the litigation privilege. It held that they were not, noting that "a press release and a Tweet to publicize the alleged misdeeds of [two parties] . . . were posted on the Internet and thus were released worldwide. Dissemination of these publications to a segment of the population as large as the 'investment community' is essentially the same as disclosure to the general public. If anyone with an interest in the outcome of the litigation is a person to whom a privileged communication could be made, *Silberg [v. Anderson* (1990) 50 Cal.3d 205, 219 (holding that the expansion of the litigation privilege to encompass publication to nonparties does not encompass publication to the general public through the press)] and *Rothman [v. Jackson* (1996) 49 Cal.App.4th 1134, 1149] would be eviscerated." (*GetFugu*, *supra*, at pp. 153–154.) A tweet, which is intended to reach a virtually unlimited audience,[7] differs sharply from the Web site posting here where only those searching for the hotel online and then taking an affirmative step by clicking on the Viceroy link would find their way to the webpage and then read the explanation of the current situation with the hotel.

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[7] According to one Web site, Twitter had more than 336 million monthly active users worldwide as of the first quarter of 2018. (<https://www.statista.com/statistics/274564/monthly-active-twitter-users-in-the-united-states/>)

2. *Fair and true reporting privilege*

And, defendants' press release is protected by the fair and true reporting privilege.

A privileged publication is one made "[b]y a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding." (Civ. Code, § 47, subd. (d)(1).) Like the litigation privilege, if the fair and true report privilege applies, the statement is absolutely privileged. (*Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 278.)

Defendants' press release falls squarely within the fair and true reporting privilege. It was a communication by defendants to the press, for republication and distribution in various news publications. Defendants' position in the press release is that Viceroy is the rightful manager of the hotel and the injunction was issued in its favor. This information is accurate. Any slight inaccuracies are insufficient to override the "substantial imputation" of the press release's statements. (*Reader's Digest Assn. v. Superior Court* (1984) 37 Cal.3d 244, 262.)

B. Defamation

"'Defamation requires the intentional publication of a false statement of fact that has a natural tendency to injure the plaintiff's reputation or that causes special damage.' [Citation.] The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage. [Citations.]" (*J-M Manufacturing Co., Inc. v. Phillips & Cohen LLP*, *supra*, 247 Cal.App.4th at p. 97.)

For the reasons set forth above, plaintiffs cannot demonstrate a probability of prevailing on their claim for defamation. At the risk of sounding redundant, the press release,

Web site statement, and travel industry letter all address the injunction. Defendants make no false statements about plaintiffs and their business.

C. Intentional Interference with Prospective Economic Advantage The elements of the tort of intentional interference with prospective economic advantage are "'"(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." [Citations.]' [Citation.]" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.) In order to prevail on this claim, plaintiffs must plead and prove that defendants' alleged interference was wrongful by some legal measure other than the fact of the interference itself. (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 389–393.) Wrongful conduct is insufficient if it is merely unfair or immoral or the product of an improper but lawful purpose. Rather, "an act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Korea Supply Co. v. Lockheed Martin Corp.*, *supra*, at p. 1159.)

In light of our conclusion that plaintiffs' first two causes of action fail, this cause of action fails as well. Plaintiffs cannot prove an independently wrongful act.

DISPOSITION

The order granting defendants' anti-SLAPP motion is affirmed. Defendants are entitled to attorney fees and costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT